IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

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O R D E R

Ramesh Kumar Kachhawaha
Vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.5606/1993 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 17th August, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Sanjay Mathur, for the petitioner.
Mr.Rameshwar Dave, Dy.Govt. Advocate for the respondent.

BY THE COURT

The petitioner has filed the present writ petition with the prayer that respondents be directed not to with hold his name and forward his name to the Departmental Promotion Committee for considering his candidature for promotion on the post of Deputy Director (Entomologist) and minor punishment should not come in the way of forwarding his name. The petitioner has

further prayed that the order of penalty dated 10.09.1992, by which he was awarded the penalty of stoppage of one annual grade increment without cumulative effect and another order dated 07.08.1993 by which his review petition was rejected should also be quashed and set aside.

It has been stated that a seniority list was circulated by the Department with regard to Assistant Entomologist and in the seniority list petitioner's name appeared at serial No.7. All other persons have been granted promotion to the post of Entomologist except the persons at serial No.1,5, and 6.

Promotion to certain post of Dy. Director Entomologist under the Rajasthan Agriculture Services Rules, 1960 (for short 'Rules of 1960') are likely to take place. All eligible candidates in the cadre of Assistant Entomologist shall be considered for promotion on the basis of seniority cum merit by DPC. The petitioner however apprehends that respondents may not forward his name for considering his case for promotion on account of minor penalty of stoppage of one annual grade increment without cumulative effect. The penalty was imposed pursuant to the inquiry held against him under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeals) Rules, 1958 (for short “CCA Rules”). He further submits that

imposition of such minor penalty is not a bar for considering his case for promotion to the post of Dy. Director Entomologist.

The Joint Director of Agriculture, Jodhpur, visited the working place of the petitioner at Rampur on 25.01.1988 and did not find the petitioner present. It is submitted that at the relevant time petitioner was on leave duly sanctioned by the competent authority. The Joint Director of Agriculture, Jodhpur vide his order dated 14.04.1988 issued a warning to the petitioner that he will remain present at farm in future and will not leave the farm without permission of the competent authority. Such a warning was issued without complying the principles of natural justice. With this warning the matter was closed and the petitioner was further warned that in future if he was not found present during the inspection the disciplinary action shall be taken against him. Thus, for all practical purposes the matter with regard to the absence of the petitioner on 20.01.1988 and 25.01.1988 was closed by the respondent with the aforesaid warning.

However, to the utmost surprise of the petitioner, a charge-sheet under Rule 17 of the CCA Rules was served on him on 12.11.1991 after four years of the aforesaid incident. The petitioner submitted a detailed reply thereto reiterating that on

20.01.1988 he was on duty and on 25.01.1988 he was on casual leave for half day and a warning letter was already issued to him on 14.04.1988, as such, on the same subject-matter fresh disciplinary proceedings could not be initiated. The petitioner requested for supply of certain documents by an application dated 21.12.1992. But neither the documents were supplied to the petitioner, nor did the Disciplinary Authority hold any inquiry in the matter nor any witnesses were examined. The Disciplinary Authority passed the order of penalty on 10.09.1992 thereby withholding his one grade annual increment without cumulative effect. The petitioner submitted review petition against the said order of penalty which too was rejected mechanically by a speaking order dated 07.08.1993. Hence this Petition.

The respondents have contested the present writ petition by filing reply thereto. In the reply it has been asserted that the penalty of stoppage of one annual grade increment was imposed upon the petitioner on proven charges of misconduct. They have asserted that the name of the petitioner was placed in the seniority cum eligibility list at serial No.4 and no person junior to the petitioner has been promoted so far. The penalty order has been passed against him after following due procedure contained in Rule 17 of the CCA Rules. The petitioner was afforded proper opportunity to defend himself. They have denied that the

petitioner was present on duty on 20.01.1988 and have asserted that he was absent on that day without getting any sanctioned leave. The order of penalty dated 10.09.1992 is self speaking order. They have denied the issuance of warning letter dated 14.04.1988 with regard to the absence of the petitioner on the aforesaid two dates 20.01.1988 and 25.01.1988. It is submitted that the order dated 14.04.1988 was a general order issued to various officers and employees requiring them to remain present in the office on time and such a similar communication was issued to all other officers. Neither any reference of these two dates has been made in this communication nor it has been issued on the basis of absence of the petitioner for particular dates. It is submitted that petitioner was absent from his duty on 20.01.1988 and 25.01.1988 without getting the leave sanctioned and this was proved in the inquiry. The petitioner submitted reply to the charge-sheet on 05.01.1992. The Disciplinary Authority has taken into consideration all his submissions before passing of the order of penalty. With regard to the demand of the petitioner that he was not supplied the documents, it has been stated in para 12 that the petitioner appeared in the Department of Personnel (Ka-3) on 21.12.1991 and inspected all the records related with the allegations levelled against him. He accordingly submitted his detailed reply to the charge-sheet on 05.01.1992. There was no violation of any procedure contained

in Rule 17 of the CCA Rules. The respondents have denied that the DPC was going to be convened for consideration of the case of promotion for the post of Dy. Director (Entomologist). They have asserted that no person junior to the petitioner has so far been promoted. They have further clarified that there was only one vacancy of the post of Dy. Director (Entomologist), whereas, the name of the petitioner is at serial No.1 and the post is required to be filled in on the basis of seniority cum merit.

I have heard Mr.Sanjay Mathur learned counsel for the petitioner and Mr.Rameshwar Dave, learned Dy. Government Advocate and perused the record.

In so far as the penalty of stoppage of one annual grade increment is concerned, the petitioner has not pointed out infraction of any rule including Rule 17 of the CCA Rules in any manner. His assertion that demanded documents were not supplied to him has also been denied by the respondents in their counter by stating that he inspected the documents and submitted his reply on 05th January, 1992. I am not persuaded to accept the argument of the petitioner that the issuance of warning letter to him vide Exhibit-3 had closed the matter with regard to his absence on 20.01.1988 and 25.01.1988.

I have examined Exhibit-3 dated 14th April, 1988. This is a general letter which has been addressed to the petitioner as also to various other officers as per the assertion made by the respondents. This letter has been issued on the general complaint that officers being not were found present at the farm and, therefore, they were required to attend the farm on time and not to leave the same before time and they were further required to proceed on leave only with the prior approval of their programme from the competent authority by entering the time of departure in the log book. The letter of warning can be said to be letter of advisory letter not a letter of warning. It is also stated that the disciplinary action shall be taken against those officers and employees who were found absent at the time of inspection in accordance with the order issued by the State Government from time to time. It cannot be accepted that it had closed the matter with regard to absence of the petitioner on 20.01.1988 and 25.01.1988.

The order of penalty having been passed in accordance with the provisions of Rule 17 of the CCA Rules. I do not find any error therein. I also do not find any error in the order dated 07.08.1993 by which the review petition of the petitioner was rejected. The petitioner has also not been able to make out any case for issuance of mandamus to the respondents requiring

them to consider his case for promotion because according to respondents the petitioner was at serial No.3 in the seniority list and two officers were above in the seniority list respectively at No.2 and 3 were to be yet given promotion and so far as no junior to the petitioner has been promoted.

In these circumstances, I do not find any merit in this writ petition and the same is therefore dismissed with no order as to costs.

[MOHAMMAD RAFIQ],J.

Ashwini/-